

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Roderick L. Hymon,
Plaintiff
v.
Julie Steps, et al.,
Defendants

Case No.: 2:23-cv-1521-JAD-BNW

**Order Addressing Untimely Objections
and Extending Deadline to File Amended
Complaint**

[ECF Nos. 16, 17]

Pro se plaintiff Roderick L. Hymon filed this § 1983 action against the manager of a local Taco Bell, police officer D. Rose, two district attorneys, and a justice of the peace for a series of events that took place after he was “directed . . . to leave the Taco Bell.”¹ On October 18, 2023, the magistrate judge screened Hymon’s complaint and dismissed it with leave to amend within 30 days because she was “unable to determine exactly what claims [he] is attempting to allege against which defendants and cannot evaluate whether [he] states any claims for relief.”² Hymon appealed the magistrate judge’s order³ and did not file an amended complaint by the deadline.

On December 21, 2023, Hymon filed two one-paragraph objections to the magistrate judge’s order.⁴ In one, he objects to the magistrate judge’s “dismissal in its entirety, especially where ‘I stated the police refuse to assist me.’”⁵ In the other, Hymon “object[s] to all [of the] magistrate [judge’s] recommendations,” “especially where in [the] complaint everyone[’s] intent

¹ ECF No. 5 at 4.

² ECF No. 4 at 3.

³ ECF No. 6. The Ninth Circuit dismissed Hymon’s appeal because the challenged order wasn’t final. ECF No. 9.

⁴ ECF No. 16; ECF No. 17.

⁵ ECF No. 16.

1 was to falsely arrest plaintiff.”⁶ He also claims that he didn’t receive the order until December
 2 15, 2023, and asks the court to appoint him counsel.⁷ I overrule Hymon’s objections and give
 3 him one more chance to file an amended complaint if he can correct the deficiencies identified in
 4 the magistrate judge’s order.

5 **A. Hymon’s objections to the magistrate judge’s order are overruled.**

6 A district judge may designate a magistrate judge “to hear and determine any pretrial
 7 matter pending before the court” (like a request for court-appointed counsel) or to recommend
 8 how the district judge should rule on a dispositive issue (like dismissal).⁸ When a litigant
 9 challenges a magistrate judge’s ruling on a non-dispositive matter, the district judge may
 10 reconsider that ruling “when it has been shown that the magistrate judge’s order is clearly
 11 erroneous or contrary to law.”⁹ This standard of review “is significantly deferential” to a
 12 magistrate judge’s determination¹⁰ and requires “a definite and firm conviction that a mistake [of
 13 fact] has been committed”¹¹ or a relevant statute, law, or rule has been omitted or misapplied.¹²
 14 When a litigant objects to a magistrate judge’s report and recommendation on a dispositive issue,
 15 the district judge’s review is instead de novo.¹³

18 ⁶ ECF No. 17.

19 ⁷ ECF No. 16; ECF No. 17.

20 ⁸ 28 U.S.C. § 636 (b)(1); Local Rule (L.R.) IB 3-1.

21 ⁹ L.R. IB 3-1(a).

22 ¹⁰ *Concrete Pipe and Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S.
 602, 623 (1993).

23 ¹¹ *Id.* (internal quotation marks omitted).

¹² *See Grimes v. City and Cnty. of S.F.*, 951 F.2d 236, 240–41 (9th Cir. 1991).

¹³ Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(B); L.R. IB 3-2(b).

1 Objections to and appeals of magistrate-judge orders are due 14 days after the order is
 2 served.¹⁴ Hymon's objection was filed more than a month late. I am skeptical of his claim that
 3 he didn't receive the magistrate judge's order until December 15, 2023, since he appealed that
 4 order on October 30, 2023.¹⁵ But in the interest of being thorough, I consider his untimely
 5 objection.

6 Hymon's one-paragraph filings do not identify any findings by the magistrate judge that
 7 he contends are mistaken, erroneous, or contrary to law. He merely states that he "especially"
 8 objects to some portion of the recommendation "where [he] stated the police refuse to assist
 9 [him]" and points me to a statement in his complaint about false arrest.¹⁶ Hymon's statement
 10 doesn't direct me to the portion of the recommendation that he claims is erroneous, nor does it
 11 explain *why* he believes it is erroneous. So I overrule his objections.

12 **B. Hymon's request for appointed counsel is denied.**

13 Hymon includes in his objections a one-sentence request for an appointed attorney.¹⁷
 14 This request is governed by 28 U.S.C. § 1915(e)(1) and, although indigent civil-rights litigants
 15 like Hymon do not have a constitutional right to appointed counsel, a court may "request an
 16 attorney to represent any person unable to afford counsel."¹⁸ But courts do so only in
 17 "exceptional circumstances."¹⁹ "When determining whether 'exceptional circumstances' exist, a
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19 ¹⁴ L.R. IB 3-1(a); L.R. IB 3-2(a).

20 ¹⁵ See ECF No. 6.

21 ¹⁶ ECF No. 16; ECF No. 17.

22 ¹⁷ ECF No. 16 ("Plaintiff moves this court to be appointed a[n] attorney . . . please appoint able
 counsel."); ECF No. 17 ("Plaintiff . . . request[s] to be appointed a[n] attorney . . . please
 consider appointed attorney.").

23 ¹⁸ *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981).

¹⁹ *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).


1 court must consider ‘the likelihood of success on the merits as well as the ability of the [plaintiff]
 2 to articulate his claims *pro se* in light of the complexity of the legal issues involved.”²⁰ “Neither
 3 of these considerations is dispositive and instead must be viewed together.”²¹

4 Hymon has failed to argue either that he is likely to succeed on the merits or that his case
 5 is particularly complex. His one-sentence requests fall far short of showing the exceptional
 6 circumstances required to appoint him counsel. So I deny this request without prejudice to his
 7 ability to file a new, properly supported motion after he submits an amended complaint.

8 **Conclusion**

9 IT IS THEREFORE ORDERED that Roderick Hymon’s objections to and appeals of the
 10 magistrate judge’s order dismissing his complaint with leave to amend [ECF Nos. 16 & 17] are
 11 **OVERRULED**. The magistrate judge’s order [ECF No. 4] is **AFFIRMED**. Hymon must file
 12 an amended complaint curing the deficiencies identified in this and the magistrate judge’s order
 13 by **April 26, 2024**. **The failure to file an amended complaint by that deadline may result in**
 14 **the dismissal of this case without further prior notice.**

15 IT IS FURTHER ORDERED that Hymon’s requests for appointed counsel **are also**
 16 **DENIED** without prejudice.

17 
 18 U.S. District Judge Jennifer A. Dorsey
 19 March 26, 2024
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23 ²⁰ *Id.*

²¹ *Id.*